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Attorneys for Plaintiff
AMERIS BANK d/b/a BALBOA CAPITAL CORPORATION

THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

AMERIS BANK, a Georgia state-
chartered banking corporation, doing
business as BALBOA CAPITAL
CORPORATION,

Plaintiff,

vs.

IRON STEEL COMPANY, INC., a
Nebraska domestic corporation; and
RUDDY NAPOLEON DUBON
GARCIA, an individual,

Defendants.

Case No. 8:24-cv-01967-DOC-ADS

[Assigned to the Hon. David O. Carter]

**BALBOA CAPITAL
CORPORATION'S MOTION FOR
DEFAULT JUDGMENT AGAINST
DEFENDANTS**

Complaint Filed: September 11, 2024
Trial Date: None

1 TO THE COURT, ALL PARTIES, AND ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on December 16, 2024, at 8:30 a.m., or as
3 soon thereafter as the matter may be heard, in Courtroom 10A of the Ronald
4 Reagan Federal Building and U.S. Courthouse, located at 411 West Fourth Street,
5 Santa Ana, CA 92701-4516, the Honorable David O. Carter. presiding, plaintiff
6 Ameris Bank, doing business as Balboa Capital Corporation (“Plaintiff” or
7 “Balboa”) will, and hereby does, apply for an entry of default judgment pursuant to
8 Federal Rules of Civil Procedure Rule 55 and Local Rules 55-1, 55-2, and 55-3,
9 against defendants Iron Steel Company, Inc., a Nebraska domestic corporation
10 (“Iron Steel”) and Ruddy Napoleon Dubon Garcia, an individual (“Garcia”),
11 (collectively with Iron Steel, “Defendants”), for a judgment amount of **\$251,302.25**.

12 PLEASE TAKE FURTHER NOTICE that Balboa seeks a default judgment
13 against Defendants in the total amount of \$251,302.25, as Balboa has established
14 (a) a sum certain due and owing by Defendants to Balboa pursuant to the
15 Equipment Financing Agreement and Guaranty entered into by Defendants and
16 Balboa; (b) that Defendants are not in military service and are neither a minor or
17 incompetent person; and (c) costs and attorneys’ fees are properly awardable.

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1 PLEASE TAKE FURTHER NOTICE that this motion is based on this
2 Notice of Motion, the supporting Memorandum of Points and Authorities, the
3 supporting declarations of Jared T. Densen and Don Ngo, and the exhibits attached
4 thereto, the pleadings and papers filed in this action, and upon such further briefing,
5 authorities, and argument submitted to the Court prior to, or during, the hearing on
6 this matter.

7
8 DATED: November 13, 2024

SALISIAN | LEE LLP

9
10 By: 

11 Jared T. Densen
12 Neal S. Salisian
13 Patty W. Chen

14 Attorneys for Plaintiff
15 AMERIS BANK d/b/a BALBOA CAPITAL
16 CORPORATION
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND RELEVANT FACTS

Plaintiff Ameris Bank, a Georgia state-chartered banking corporation, doing business as Balboa Capital Corporation (“Plaintiff” or “Balboa”) submits the instant Motion for Default Judgment against defendants Iron Steel Company, Inc., a Nebraska domestic corporation (“Iron Steel”) and Ruddy Napoleon Dubon Garcia, an individual (“Garcia”), (collectively with Iron Steel, “Defendants”).

a. The Equipment Financing Agreement.

This action involves a claim for damages by Balboa against both Defendants for breach of the written Equipment Financing Agreement No. 453378-000 (the “EFA”), and breach of the corresponding personal guaranty of that agreement. [See Declaration of Don Ngo (“Ngo Decl.”), ¶3, Exh. A.]

Specifically, Balboa, on the one hand, and Iron Steel and Garcia, on the other, entered into the EFA on or about April 25, 2023. [See *id.*] Under the terms of the EFA, Balboa loaned to Iron Steel the sum of \$303,694.81, in order to finance equipment for its business (the “Collateral”). [See *id.*]

Concurrent with the execution of the EFA, and in order to induce Balboa to enter into the EFA with Iron Steel, Garcia personally guaranteed, in writing, the payment of the then-existing and future indebtedness due and owing to Balboa under the terms of the EFA (the “Guaranty”). [See *id.*, ¶4, Exh. B.] Balboa relied on such the Guaranty to finance the Collateral for Iron Steel’s business. [See *id.*]

Under the EFA, Iron Steel was required to make three (3) monthly payments of \$0.00 and thirty-three (33) monthly payments of \$11,152.61, beginning on August 27, 2023. [See *id.*, ¶5, Exh. A.] The last payment received by Balboa was credited toward the payment due for March 27, 2024. [See *id.*, Exh. C.] Therefore, on April 27, 2024, Iron Steel breached the EFA, and Garcia breached the Guaranty, by failing to make the monthly payment due on that date, and thus, both have remained continuously in default. [See *id.*]

1 At the time of Defendants' default, in addition to late charges in the amount
2 of \$5,196.86, there remained twenty-five (25) monthly payments, for a total of
3 \$284,012.11, due to Balboa. [*See id.*, ¶6.]

4 Following Defendants' default, Defendants made five (5) additional full
5 monthly payments for April 27, 2024, May 27, 2024, June 27, 2024, July 27, 2024,
6 and August 27, 2024, and one (1) partial payment of \$651.65 for September 27,
7 2024. [*See id.*, ¶7.] Defendants have therefore been credited in the amount of
8 \$56,414.70. [*See id.*] Thus, **\$227,597.41** remains owed to Balboa. [*See id.*]
9 Defendants have since failed to make further payments. [*See id.*]

10 In addition, based on the amount due of \$227,597.41, Balboa is entitled to
11 prejudgment interest at the statutory rate of ten percent (10%) per annum, from
12 April 27, 2024, the date of breach, to December 16, 2024, the date noticed for the
13 hearing of this Motion for Default Judgment ("Default Motion"), for a total interest
14 amount of **\$14,589.90**, accruing at a rate of **\$62.35 per day**, until the entry of
15 judgment. [*See id.*, ¶8; *see also* Declaration of Jared T. Densen ("Densen Decl."),
16 ¶¶5-6.]

17 **b. Attorneys' Fees and Costs**

18 Pursuant to Paragraph 20 of the EFA, Balboa is entitled to recover its
19 attorneys' fees and costs from Defendants. [*See* Densen Decl., ¶7, Exh. E.] The
20 amount of reasonable attorneys' fees is fixed by Local Rule 55-3, in the sum of
21 **\$8,151.94**. [*See id.*] Balboa has indeed incurred **\$963.00**, in recoverable costs -
22 \$405.00 for filing of the Complaint, \$279.00 for service upon Iron Steel, and
23 \$279.00 for service upon Garcia. [*See id.*]

24 **c. Default Judgment Motion**

25 Balboa's Default Motion satisfies the procedural requirements of Local Rule
26 55-1 and 55-2, and Federal Rule of Civil Procedure 55(b). Balboa filed its
27 Complaint and case-initiating documents on September 11, 2024. [*See* Dkts. 1-4.]
28 Defendants Iron Steel and Garcia were properly served on October 3, 2024,

1 pursuant to Federal Rule of Civil Procedure 4. [See Dkts. 14-15.] On October 31,
2 2024, Balboa filed its Request for Clerk to Enter Default against defendants Iron
3 Steel and Garcia (“Default Entry Request”), and the Clerk entered default against
4 each of the defendants on November 5, 2024. [See Dkts. 16-17.]

5 Defendant Iron Steel is a Nebraska domestic corporation, and is not a minor,
6 incompetent person, or a person in military service or otherwise exempted from
7 default judgment under the Servicemembers Civil Relief Act of 1940 (the
8 “SCRA”). [See Densen Decl., ¶4.] Further, defendant Garcia is not a minor, an
9 incompetent person, or a person in military service or otherwise exempted from
10 default judgment under the SCRA. [See *id.*, Exh. D.]

11 Moreover, this Court has subject matter jurisdiction over the instant action.
12 The amount in controversy, as alleged in the Complaint and as set forth herein,
13 exceeds \$75,000. [See Dkt. 1; *see also* Densen Decl., ¶8.] Plaintiff Balboa was and
14 still operates as a California corporation, with its principal place of business in
15 Orange County, California. [See Dkt. 1, ¶1; *see also id.*] Balboa is also now a
16 wholly owned subsidiary of Ameris Bank, and operating as a division of Ameris
17 Bank, a Georgia state-chartered banking corporation, and accordingly, Balboa is a
18 citizen of the State of California, as well as the State of Georgia, via its parent
19 company, Ameris Bank. [See *id.*]

20 Based upon my office’s research, and information and belief, Defendant Iron
21 Steel is a Nebraska domestic corporation, with its principal place of business in
22 Nebraska. [See *id.*, ¶9, Exh. E.] Thus Iron Steel is a citizen of the State of
23 Nebraska. [See *id.*] Based upon my office’s research, and information and belief,
24 including the Driver’s License Garcia submitted to Balboa, Garcia is domiciled at at
25 Chicago, Illinois 60647. [See *id.*] Thus, Garcia is a citizen of the State of Illinois.
26 [See *id.*] As such, there exists complete diversity amongst the Plaintiff and
27 Defendants. [See *id.*, ¶10.]
28

As set forth below, a default judgment should be entered against each of the Defendants since Balboa satisfies all seven factors under *Eitel*. Moreover, Balboa has adequately proven its damages. Thus, Balboa respectfully requests that this Court grant its request for a default judgment against Defendants in the amount of **\$251,302.25**.

II. LEGAL ARGUMENT

“When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend,” the Court may enter a judgment of default upon Plaintiff’s application after an entry of default. *See* Fed. R. Civ. P. 55. Local Rule 55 sets forth the procedural requirements that must be satisfied by a party moving for a default judgment. Balboa’s Motion has satisfied such requirements.

Here, Balboa filed its Complaint and case-initiating documents on September 11, 2024. [*See* Dkts. 1-4.] Defendants Iron Steel and Garcia were properly served on October 3, 2024, pursuant to Federal Rule of Civil Procedure 4. [*See* Dkts. 14-15.] On October 31, 2024 Balboa filed its Default Entry Request, and the Clerk entered default against each of the defendants on November 5, 2024. [*See* Dkts. 16-17.]

Defendant Iron Steel is a Nebraska domestic corporation, and is not a minor, incompetent person, or a person in military service or otherwise exempted from default judgment under the SCRA. [*See* Densen Decl., ¶4.] Further, defendant Garcia is not a minor, an incompetent person, or a person in military service or otherwise exempted from default judgment under the SCRA. [*See id.*, Exh. D.]

The Ninth Circuit follow the seven *Eitel* factors in deciding whether to enter a default judgment:

(1) the possibility of prejudice to the plaintiff; (2) the merits of plaintiff’s substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

1 *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). A plaintiff need not
2 prove that all seven factors weigh in its favor, as courts *may* consider these factors
3 in their discretion on whether to enter a default judgment. *See id.*

4 Here, the underlying facts in this action show that all seven of the *Eitel*
5 factors weigh in Balboa's favor, and thus, supports the entry of default judgment.

6 **A. Plaintiff Will Be Highly Prejudiced If Its Default Judgment**
7 **Motion Is Denied.**

8 A situation in which a plaintiff will be without any other recourse or recovery
9 should its default judgment application be denied qualifies as prejudice. *See*
10 *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002).

11 Here, Balboa has submitted its Motion for Default Judgment as a last resort
12 due to Defendants' deliberate unwillingness to accept responsibility for its actions
13 or even acknowledge Balboa's allegations.

14 The fact remains that Balboa, pursuant to the EFA, financed the Collateral
15 for Defendants, with Defendants agreeing to make three (3) monthly payments of
16 \$0.00 and thirty-three (33) monthly payments of \$11,152.613, for which twenty-
17 five (25) monthly payments, in addition to late charges in the amount of \$5,196.86,
18 for a total of \$284,012.11, still remained due to Balboa at the time of Defendants'
19 default. [See Ngo Decl., ¶¶5-6, Exh. C.] Following Defendants' default,
20 Defendants made five (5) additional full monthly payments for April 27, 2024, May
21 27, 2024, June 27, 2024, July 27, 2024, and August 27, 2024, and one (1) partial
22 payment of \$651.65 for September 27, 2024. [See *id.*, ¶7.] Defendants have
23 therefore been credited in the amount of \$56,414.70. [See *id.*] Thus, **\$227,597.41**
24 remains owed to Balboa. [See *id.*] Balboa has made demands for its monies from
25 Defendants and under the Guaranty, all of which Defendants have failed to pay
26 back. [See *id.*, ¶9.]

27 Balboa filed its Complaint in this action to recover the monies owed on it,
28 but Defendants have been unwilling to participate in, or otherwise acknowledge, the

1 litigation. Balboa's Motion for Default Judgment is its final option for an attempt
2 at recovery, and without the Court granting the default judgment, Balboa will be
3 prejudiced and be denied its right to a judicial resolution of its presented claims.
4 *See PepsiCo*, 238 F.Supp.2d at 1177.

5 Moreover, if Balboa's Motion for Default Judgment is denied, it will suffer a
6 significant loss due to no fault of its own, and Defendants will obtain a significant
7 windfall of over \$251,302.25. Not only will the deliberate nonaction by
8 Defendants and their continued stalling techniques be unjustly rewarded, but
9 Balboa will effectively be penalized for its procedurally proper demands for the
10 return of its monies available through the court system's proper channels.

11 Balboa will be substantially prejudiced, especially with no other available
12 recourse, should its Motion for Default Judgment be denied, and thus, further
13 supports the Default Judgment against Defendants to be granted by this Court.

14 **B. Plaintiff Has A High Likelihood Of Success On The Merits Of Its**
15 **Substantive Claims And Its Complaint Is Sufficiently Pled.**

16 "The general rule of law is that upon default[,] the factual allegations of the
17 complaint, except those relating to the amount of damages, will be taken as true."
18 *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977). Courts often
19 consider the second (merits of the claim) and third (sufficiency of the complaint)
20 factors under *Eitel* together. *See PepsiCo*, 238 F.Supp.2d at 1177.

21 The elements for a breach of contract are: (1) the existence of a contract, (2)
22 performance by the plaintiff of its obligations under the contract, (3) breach of the
23 contract by the defendant, and (4) resulting damages proximately caused by the
24 defendant's breach of contract. *Reichert v. Gen. Ins. Co.*, 68 Cal.2d 822, 830
25 (1968); *Acoustics, Inc. v. Trepte Constr. Co.*, 14 Cal.App.3d 887, 916 (1971); *see*
26 *also* Civ. Code §§ 1620, 3300; and RESTATEMENT 2d. CONTRACTS § 235(2).

27 Here, all elements are met. Specifically, Balboa, on the one hand, and Iron
28 Steel and Garcia, on the other, entered into the EFA, under which Balboa loaned to

1 Iron Steel the sum of \$303,694.81, in order to finance the Collateral for its
2 business. [See Ngo Decl., ¶3, Exh. A.]

3 Concurrent with the execution of the EFA, and in order to induce Balboa to
4 enter into the EFA with Iron Steel, Garcia personally guaranteed, in writing, the
5 payments of the then-existing and future indebtedness due and owing to Balboa
6 under the terms of the EFA via the Guaranty. [See *id.*, ¶4, Exh. B.] Balboa relied
7 on such the Guaranty to agree to finance the Collateral for Iron Steel's business.
8 [See *id.*]

9 Under the EFA, Iron Steel was required to make three (3) monthly payments
10 of \$0.00 and thirty-three (33) monthly payments of \$11,152.613 beginning on
11 August 27, 2023. [See *id.*, ¶5.] The last payment received by Balboa was credited
12 toward the payment due for March 27, 2024. [See *id.*] Therefore, on April 27,
13 2024, Iron Steel breached the EFA, and Garcia breached the Guaranty, by failing to
14 make the monthly payment due on that date, and thus, both have remained
15 continuously in default. [See *id.*, Exh. C.]

16 At the time of Defendants' default, in addition to late charges in the amount
17 of \$5,196.86, there remained twenty-five (25) monthly payments, for a total of
18 \$284,012.11, due to Balboa. [See *id.*, ¶6.]

19 Following Defendants' default, Defendants made five (5) additional full
20 monthly payments for April 27, 2024, May 27, 2024, June 27, 2024, July 27, 2024,
21 and August 27, 2024, and one (1) partial payment of \$651.65 for September 27,
22 2024. [See *id.*, ¶7.] Defendants have therefore been credited in the amount of
23 \$56,414.70. [See *id.*] Thus, **\$227,597.41** remains owed to Balboa. [See *id.*]
24 Defendants have since failed to make further payments. [See *id.*]

25 There is no doubt, and it cannot be disputed that: (1) Balboa and Defendants
26 entered into the EFA; (2) Garcia personally guaranteed, in writing, the payment of
27 the then-existing and future indebtedness due and owing to Balboa under the terms
28 of the EFA; (3) Iron Steel received the loan in order to finance the Collateral for its

1 business; (4) Defendants ceased making payments pursuant to the EFA; and (5)
2 Balboa has suffered and continues to suffer damages due to Defendants' continued
3 nonpayment under the EFA. Thus, Balboa has a substantially high likelihood in
4 succeeding on the merits of its claims. In fact, no known defenses exist to any of
5 the material facts.

6 **C. The Sum Of Money At Stake Favors An Entry Of A Default**
7 **Judgment Against Defendants.**

8 As a general rule, courts factor the sum of money at stake on a case-by-case
9 basis, and in relation to the other factors influencing whether to enter default
10 judgment. *See Eitel*, 782 F.2d at 1472 (default judgment was denied where plaintiff
11 was seeking \$3 million in damages *and* the parties disputed material facts). This
12 requires the court to assess whether the recovery sought is proportional to the harm
13 caused by defendant's conduct. *See Walters v. Statewide Concrete Barrier, Inc.*,
14 No. C 04-2559 JSW, 2006 WL 2527776, at *4 (N.D. Cal. Aug. 30, 2006) (“[i]f the
15 sum of money at issue is reasonably proportionate to the harm caused by the
16 defendant's actions, then default judgment is warranted”).

17 In *Penpower Tech, Ltd. v. S.P.C. Tech.*, 627 F. Supp. 2d 1083 (N.D. Cal.
18 2008), despite reasoning that plaintiff's request for \$677,075.37 in treble damages,
19 \$500,000.00 in punitive damages, \$100,000.00 in statutory damages, attorneys'
20 fees of \$16,497.00, and costs of \$2,005.00, were “speculative” and weighed against
21 default judgment, the court nevertheless granted plaintiff's default judgment.

22 Here, Balboa seeks compensatory damages pursuant to the EFA in the
23 amount of **\$227,597.41**; prejudgment interest from April 27, 2024, the date of
24 breach, to December 16, 2024, the date noticed for the hearing of this Default
25 Motion, in the amount of **\$14,589.90**, plus **\$62.35 per day** until the entry of
26 judgment; statutory attorneys' fees, in the amount of **\$8,151.94**; and costs in the
27 amount of **\$963.00**. [*See* Densen Decl., ¶¶5-7, Exh. E.] The damages sought are
28 contractually-based and arise out of the clear terms and obligations of the EFA; the

1 prejudgment interest was calculated at the statutory rate of ten percent (10%) per
2 annum; and the attorneys' fees requested are fixed by Local Rule 55-3. [*See id.*,
3 ¶7.]

4 As such, the sum of money sought is reasonable and far from speculative. It
5 is also substantially less than the \$3 million sought in *Eitel*, in which this sum, and
6 other factors, weighed in the favor of denying default judgment. And it is also
7 substantially less than the roughly \$1.3 million sought in *Penpower Tech*, in which
8 default judgment was granted, despite the sum of money being deemed
9 "speculative."

10 Thus, the sum of money sought in this action weighs in the favor of granting
11 default judgment, especially in the light of the other seven *Eitel* factors, and due to
12 the certainty and reasonableness of the sum.

13 **D. There Are No Material Facts That Are Reasonably In Dispute.**

14 "The general rule of law is that upon default[,], the factual allegations of the
15 complaint, except those relating to the amount of damages, will be taken as true."
16 *See Geddes, supra*, 559 F.2d at 560. Where a plaintiff's complaint is well-pleaded
17 and the defendants make no effort to properly respond, the likelihood of disputed
18 facts is very low. *See Landstar Ranger, Inc. v. Parth Enters, Inc.*, 725 F.Supp.2d
19 916, 921 (C.D. Cal. 2010).

20 As thoroughly detailed in Section II.B., *supra*, there are no material facts that
21 are reasonably in dispute.

22 Here, specifically, Balboa, on the one hand, and Iron Steel and Garcia, on the
23 other, entered into the EFA on or about April 25, 2023. [*See* Ngo Decl., ¶3, Exh.
24 A.] Under the terms of the EFA, Balboa loaned to Iron Steel the sum of
25 \$303,694.81, in order to finance the Collateral for its business. [*See id.*]

26 Concurrent with the execution of the EFA, and in order to induce Balboa to
27 enter into the EFA with Iron Steel, Garcia personally guaranteed, in writing, the
28 payment of the then-existing and future indebtedness due and owing to Balboa

1 under the terms of the EFA via the Guaranty. [*See id.*, ¶4, Exh. B.] Balboa relied
2 on such the Guaranty to agree to finance the Collateral for Iron Steel’s business.
3 [*See id.*]

4 Under the EFA, Iron Steel was required to make three (3) monthly payments
5 of \$0.00 and thirty-three (33) monthly payments of \$11,152.613 beginning on
6 August 27, 2023. [*See id.*, ¶5, Exh. C.] The last payment received by Balboa was
7 credited toward the payment due for March 27, 2024. [*See id.*] Therefore, on April
8 27, 2024, Iron Steel breached the EFA, and Garcia breached the Guaranty, by
9 failing to make the monthly payment due on that date, and thus, both have remained
10 continuously in default. [*See id.*]

11 At the time of Defendants’ default, in addition to late charges in the amount
12 of \$5,196.86, there remained twenty-five (25) monthly payments, for a total of
13 \$284,012.11, due to Balboa. [*See id.*, ¶6.]

14 Following Defendants’ default, Defendants made five (5) additional full
15 monthly payments for April 27, 2024, May 27, 2024, June 27, 2024, July 27, 2024,
16 and August 27, 2024, and one (1) partial payment of \$651.65 for September 27,
17 2024. [*See id.*, ¶7.] Defendants have therefore been credited in the amount of
18 \$56,414.70. [*See id.*] Thus, **\$227,597.41** remains owed to Balboa. [*See id.*]
19 Defendants have since failed to make further payments. [*See id.*]

20 Defendants cannot dispute any of the facts in any way or make any
21 reasonable arguments surrounding any of the material facts in this action. If
22 anything, Defendants’ refusal to participate in, or even acknowledge the litigation,
23 is evidence that no such defense exists.

24 **E. Defendants’ Defaults Are Not The Result Of Excusable Neglect.**

25 Excusable neglect is not found where a defendant who was properly served
26 simply ignored the deadline to respond. *See NewGen, LLC v. Safe Cig, LLC*, 804
27 F.3d 606, 616 (9th Cir. 2016) (adding that defendant’s counsel contacting plaintiff’s
28 counsel after default had been entered did not constitute to “excusable neglect”). In

1 fact, courts have required some showing of good faith by the defaulted defendant to
2 constitute “excusable neglect.” *See Eitel*, 782 F.2d at 1471-72 (defendant’s failure
3 to answer was held to be excusable neglect in light of ongoing settlement
4 negotiations); *Draper v. Coombs*, 792 F.2d 915, 924 (9th Cir. 1986) (finding
5 excusable neglect where defendant filed an answer past the deadline and on the
6 same day that the motion for default judgment was filed); *O’Connor v. State of*
7 *Nevada*, 27 F.3d 357, 364 (9th Cir. 1994) (excusable neglect was found where
8 defendant has good faith of a timely answer); *Educational Serv., Inc. v. Maryland*
9 *State Board for Higher Education*, 710 F.2d 170, 176 (4th Cir. 1983) (excusable
10 neglect found where defendant had appeared in the action and opposed a request for
11 a preliminary injunction in which the party had set forth its defenses); *McKnight v.*
12 *Webster*, 499 F.Supp. 420, 424 (E.D. PA 1980) (excusable neglect found where
13 defendant sought an extension of time to respond, but a default judgment was
14 sought in the interim).

15 Where the defendants “were properly served with the Complaint, the notice
16 for the entry of default, as well as documents in support of the instant [default
17 judgment application],” favors this factor for the entry of default judgment. *See*
18 *Shanghai Automation Instrument Co. Ltd. v. Kuei*, 194 F.Supp.2d 995, 1005 (N.D.
19 Cal. 2001).

20 Here, Defendants failed to make any showing whatsoever that their
21 unwillingness to participate in the litigation stemmed from, or was in any way due
22 to, excusable neglect. Defendant Iron Steel was properly served by substituted
23 service upon Ceasar Garcia, as the registered agent for service of process for Iron
24 Steel, at 220 Road D Columbus, NE 68601, by leaving copies of the documents
25 with defendant Garcia, Person Most In Charge, and mailing copies to Ceasar Garcia
26 at that same address. [See Dkt. 14.] Defendant Garcia was properly served by
27 personal service by personally delivering copies of the documents to defendant
28 Garcia at 220 Road D Columbus, NE 68601. [See Dkt. 15.]

1 Further, Defendants were additionally served at the same addresses thereafter
2 with the Default Entry Request. [See Dkt. 16.] Defendants have not yet made any
3 appearance in the action, and thus, have not made any effort to answer, defend, or
4 otherwise participate, in this action.

5 As detailed above, courts have found for excusable neglect only in cases in
6 which a defendant makes good faith showing that the defendant attempts to
7 participate in the litigation to address and defend the allegations set forth against the
8 defendant. Declining to respond to a complaint after proper service (even in the
9 case where defendant's counsel contacts plaintiff's counsel after the entry of
10 default), does not warrant a finding of excusable neglect. *See NewGen*, 804 F.3d at
11 616.

12 Here, Defendants have failed to acknowledge their wrongdoings and the
13 allegations they face, even in the slightest degree. Instead, Defendants have
14 blatantly ignored Balboa's Complaint and all other papers filed thereafter. Rather,
15 Defendants' course of action in response to Balboa's Complaint, or the apparent
16 lack thereof, is intentional, and thus, would not constitute excusable neglect.

17 **F. Policy Concerns Favor Default Judgment In This Matter.**

18 Although courts have expressed that as a general rule, policy favors decisions
19 on the merits, cases should be decided on its merits only when *reasonably possible*.
20 *See Pena v. Seguros La Comercia, S.A.*, 770 F.2d 811, 814 (9th Cir. 1985)
21 (emphasis added). The policy preference to decide a case on its merits is not
22 dispositive, and thus, does not preclude a court from granting a default judgment.
23 *See Penpower Tech, Ltd.*, 627 F.Supp.2d at 1093 (defendants' failure to respond to
24 a Complaint makes a case decision on its merits impractical, if not, impossible).

25 Here, even the policy concerns to decide a case on its merits favor Balboa to
26 grant Balboa's request for a default judgment. As detailed in II.E., *supra*,
27 Defendants have made it abundantly clear that they will not participate in this
28 litigation, or even acknowledge the instant action. Defendants have deliberately

1 chosen a course of action to simply ignore Balboa and its claims against them,
2 including their own liability. Thus, the Court's decision will not be based on the
3 merits of this case since there is no reasonable possibility at this point given
4 Defendants' refusal to participate in this litigation.

5 Moreover, policy concerns certainly do not weigh in favor of rewarding
6 Defendants for their unwillingness to account for their liability to Balboa, and the
7 extremely prejudicial windfall they would receive should their deliberate silence
8 and stalling techniques be rewarded, at Balboa's expense. *See* Section II.A., *supra*.

9 **G. Plaintiff Has Proven Its Damages.**

10 Under the EFA, Iron Steel was required to make three (3) monthly payments
11 of \$0.00 and thirty-three (33) monthly payments of \$11,152.613 beginning on
12 August 27, 2023. [*See id.*, ¶5, Exh. C.] The last payment received by Balboa was
13 credited toward the payment due for March 27, 2024. [*See id.*] Therefore, on April
14 27, 2024, Iron Steel breached the EFA, and Garcia breached the Guaranty, by
15 failing to make the monthly payment due on that date, and thus, both have remained
16 continuously in default. [*See id.*]

17 At the time of Defendants' default, in addition to late charges in the amount
18 of \$5,196.86, there remained twenty-five (25) monthly payments, for a total of
19 \$284,012.11, due to Balboa. [*See id.*, ¶6.]

20 Following Defendants' default, Defendants made five (5) additional full
21 monthly payments for April 27, 2024, May 27, 2024, June 27, 2024, July 27, 2024,
22 and August 27, 2024, and one (1) partial payment of \$651.65 for September 27,
23 2024. [*See id.*, ¶7.] Defendants have therefore been credited in the amount of
24 \$56,414.70. [*See id.*] Thus, **\$227,597.41** remains owed to Balboa. [*See id.*]
25 Defendants have since failed to make further payments. [*See id.*]

26 In addition, based on the amount due of \$227,597.41, Balboa is entitled to
27 prejudgment interest at the statutory rate of ten percent (10%) per annum, from
28 April 27, 2024, the date of breach, to December 16, 2024, the date noticed for the

1 hearing of this Default Motion, for a total interest amount of **\$14,589.90**, accruing
2 at a rate of **\$62.35 per day**, until the entry of judgment. [See *id.*, ¶8; see also
3 Densen Decl., ¶¶5-6.]

4 Pursuant to Paragraph 20 of the EFA, Balboa is entitled to recover its
5 attorneys' fees and costs from Defendants. [See Densen Decl., ¶7, Exh. E.] The
6 amount of reasonable attorneys' fees is fixed by Local Rule 55-3, in the sum of
7 **\$8,151.94**. [See *id.*] Balboa has indeed incurred **\$963.00**, in recoverable costs -
8 \$405.00 for filing of the Complaint, \$279.00 for service upon Iron Steel, and
9 \$279.00 for service upon Garcia. [See *id.*]

10 Altogether, this totals out to **\$251,302.25** (as of December 16, 2024),
11 calculated as follows:

12	- Amount owed:	\$227,597.41
13	- Prejudgment Interest:	\$ 14,589.90
14	- Attorneys' Fees:	\$ 8,151.94
15	- <u>Recoverable Costs:</u>	<u>\$ 963.00</u>
16	- Total:	<u>\$251,302.25</u>

17 **III. CONCLUSION**

18 Based on Balboa's Complaint, Default Judgment Motion, and all supporting
19 papers, Balboa respectfully requests that the Court grant its Default Judgment
20 Motion against Defendants, in the total amount of **\$251,302.25**.

21
22 DATE: November 13, 2024

SALISIAN | LEE LLP

23 By: 

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25 Neal S. Salisian
26 Patty W. Chen

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28 AMERIS BANK d/b/a BALBOA CAPITAL CORPORATION